RONALD BEADLE

v.

HAMZAH HM SAMAN & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[CIVIL SUIT NO: S6-21-64-2000]
26 JANUARY 2002

LIMITATION: *Public Authorities Protection Act 1948 - Limitation period - Calculation of 36-month limitation period - Distinction between single and continuous acts - When time began to run - Public Authorities Protection Act 1948, s. 2(a)*

PUBLIC AUTHORITIES: *Limitation - Action against public authority - Limitation period - Calculation of 36-month limitation period - Distinction between single and continuous acts - When time began to run - Public Authorities Protection Act 1948, s. 2(a)*

PUBLIC AUTHORITIES: *Protection - Immunity from legal proceedings - Public officer - Police officer - Government - Act lawfully done - Issuance of certificate by Assistant D-G of Inland Revenue - Seizure of passport by police - Income Tax Act 1967, s. 104(1), (2) (5)*

The plaintiff, a British citizen, was employed by SEA Helicopters (M) Sdn Bhd ('SEA') as its director of operations on 31 December 1980. Upon his resignation a few months later, the Inland Revenue Board ('the 2nd defendant') demanded RM22,778.70 from SEA, being the plaintiff's outstanding income tax. SEA did not make the payment and the Government of Malaysia ('the 3rd defendant') commenced proceedings against it. The Assistant D-G of Inland Revenue ('the 1st defendant') then issued a certificate under s. 104 of the Income Tax Act 1967 ('the ITA') to the Inspector General of Police and the D-G of Immigration to prevent the plaintiff from leaving Malaysia. The plaintiff's international passport was then seized by the police, and despite several requests the defendants refused to withdraw the certificate. Subsequently, SEA was wound-up and the 3rd defendant brought a claim against the plaintiff for the recovery of the tax instead. The Sessions Court found for the 3rd defendant but the High Court allowed the plaintiff's appeal and dismissed the 3rd defendant's claim. The plaintiff's passport was finally returned to him on 21 April 1998.

The plaintiff then brought an action against the defendants for the allegedly wrongful act done by the 1st defendant as a public officer acting as an agent and under the instructions of the 2nd and 3rd defendants. The instant appeal by the 1st and 3rd defendants was from the decision of the senior assistant registrar dismissing their application to strike out the plaintiff's writ of summons and statement of claim under O. 18 r. 19(1)(b) or (d) Rules of the High Court 1980.

Held:

[1] The acts complained of, *ie*, the issuance of the certificate by the 1st defendant on 17 December 1981 and the seizure of the plaintiff's passport by the 3rd defendant in April 1982, were 'single' and **not** 'continuous' acts. These two acts therefore fell within the **first limb** of s. 2(a) of the Public Authorities Protection Act 1948 ('the PAPA'). Consequently, for the purpose of calculating the 36-month limitation period under s. 2(a) of the PAPA, the relevant dates from which time began to run would be 17 December 1981 and/or April 1982. The plaintiff was, therefore, well out of time and had contravened s. 2(a) of the PAPA when he brought his action against the defendants in year 2000. On this ground alone, the defendants' application to strike out the plaintiff's writ of summons and statement of claim should have been allowed. (pp 540 f-h & 541 a-b)

[2] Section 104(5) of the ITA clearly provides legal immunity to any public officer for any act lawfully done under the said section. The acts of the 1st and 3rd defendants in issuing the certificate and in seizing the plaintiff's passport were, in the particular circumstances of the case, lawfully done. (p 542 d-f)

[1st and 3rd defendants' appeal allowed; plaintiff's writ and statement of claim struck out.]

Case(s) referred to:

SR Katherine Lim KH v. Ketua Pengarah Perkhidmatan Perubatan Malaysia & Ors [1997] 2 CLJ 564 ***(refd)***

Legislation referred to:

Income Tax Act 1967, s. 104(1), (5)
Public Authorities Protection Act 1948, s. 2(a)
Rules of the High Court 1980, O. 18 r. 19(1)(b), (d)

For the plaintiff - Jeffrey Wong; M/s Jeffrey Wong & Lim
For the 1st & 3rd defendants - Mohamed Naser Desa SFC; A-G's Chambers

Reported by Gan Peng Chiang

JUDGMENT

Azmel Maamor J:

This is an appeal by the 1st and 3rd defendants against the decision of the learned senior assistant registrar dismissing their application for an order to strike out the plaintiff's writ of summons and statement of claim under O. 18 r. 19(1)(b) or (d) of the Rules of the High Court 1980.

The brief facts of the case are as follows. The plaintiff, a British citizen, was employed as a Director of Operations by the SEA Helicopters (M) Sdn. Bhd. (SEAH) effective from 31 December 1980. On the resignation of the plaintiff from SEAH the 2nd defendant by a letter dated 6 April 1981 directed SEAH to remit to the 2nd defendant the sum of RM22,778.70 being the plaintiff's outstanding income tax. However, SEAH failed to make such remittance to the 2nd defendant. As a result of that the 3rd defendant commenced legal proceedings against SEAH. And on or about 17 December 1981 the 1st defendant in his capacity as the Assistant Director General of Inland Revenue, acting under s. 104 of the Income Tax Act 1967 issued a certificate to the Inspector General of Police and Director General of Immigration preventing the plaintiff from leaving Malaysia until the plaintiff's income tax is paid or security furnished to the satisfaction of the Director General of Inland Revenue. In accordance with the certificate the police seized the plaintiff's international passport. Despite several requests made by the plaintiff, the defendant refused to withdraw the certificate and release the plaintiff's international passport to him.

In the meantime SEAH was ordered to be wound up. As such the 3rd defendant decided not to pursue further action against SEAH to recover the plaintiff's outstanding income tax. Instead the 3rd defendant commenced action against the plaintiff claiming for the outstanding income tax. While the 3rd defendant was successful in its claim at the Sessions Court, on appeal to the High Court by the plaintiff the decision was reversed which resulted in the 3rd defendant's claim being dismissed on or about 17 February 1998. Subsequently on 21 April 1998 the plaintiff's international passport was released to the plaintiff, after a period of about 16 years.

This action brought by the plaintiff was for wrongful act done or a neglect or default committed by the 1st defendant as a public officer acting as an agent of and acting under the instructions of the 2nd and 3rd defendants.

On 28 July 2000 the defendants applied by way of saman dalam kamar for an order to strike out the plaintiff's writ of summons and statement of claim under O. 18 r. 19(1)(b) and (d) of the Rules of the High Court 1980. At the original hearing before the learned senior assistant registrar the defendants' application was dismissed. Hence the appeal by the 1st and 3rd defendants to the judge in chambers.

In making the application the 1st and 3rd defendants relied on two main grounds, namely:

(1) That the defendant had instituted this action against the defendants outside the limitation period as provided by s. 2(a) of the Public Authorities Protection Act 1948 and

(2) That the plaintiff is prevented from instituting any action against the defendants by virtue of s. 104(5) of Income Tax Act 1967.

Let me begin by considering the defendant's first ground. It deals with s. 2(a) of Public Authorities Protection Act 1948 (PAPA) which reads:

2. Where, after the coming into force of this Act, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intented execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect:

(a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty-six months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within thirty-six months next after the ceasing thereof.

From the facts of this case the act of the 1st defendant which the plaintiff had complained was the issuance of the certificate under s. 104(1) of the Income Tax Act **on or about 17 December 1981,** and as against the 3rd defendant was the seizure of the plaintiff's international passport **on or about April 1982.** In my view the acts of the 1st and 3rd defendants which the plaintiff had complained were single acts. Therefore their acts cannot be said to come within the meaning of continuous acts. As against the 1st defendant the issuance of the certificate was made by him on or about 17 December 1981. He only did that act and nothing more. And as against the 3rd defendant the seizure of the plaintiff's international passport was made on or about April 1982. These are the two dates of the act or neglect or default complained of by the plaintiff against the 1st and the 3rd defendant respectively. Hence there is no doubt in my mind that for the purpose of computing the period of 36 months under s. 2(a) of PAPA the date when the 1st defendant issued the certificate and the date when the plaintiff's international passport was seized by the 3rd defendant should be used as the commencement of the 36 months limitation period (See *SR Katherine Lim KH v. Ketua Pengarah Perkhidmatan Perubatan Malaysia & Ors*) [1997] 2 CLJ 564.

Based on the facts of this case I was fully satisfied that the plaintiff had contravened the provision of s. 2(a) of PAPA when he instituted the action against the defendants well beyond the 36 months period of the acts complained of. On this ground alone the 1st and 3rd defendants' application to strike out the plaintiff's writ of summons and statement of claim should be granted.

I shall now consider the defendant's second ground which entails an analysis of the provision of s. 104 of the Income Tax Act 1967. It reads as follows:

> 104. (1) The Director General, where he is of the opinion that any person is about or likely to leave Malaysia without paying:
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> (a) all tax payable by him (whether or not due or due and payable);
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> (b) all sums payable by him under s. 103(4), (5) or (5A); and
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> (c) all debts payable by him under s. 107A(2) or 109(2) or 109B(2),
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> may issue to any Commissioner of Police or Director of Immigration a certificate containing particulars of the tax, sums and debts so payable with a request for that person to be prevented from leaving Malaysia unless and until he pays all the tax, sums and debts so payable or furnishes security to the satisfaction of the Director General for their payment.
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> (2) Subject to any order issued or made under any written law relating to banishment or immigration, any Commissioner of Police or Director of Immigration who receives a request under subsection (1) in respect of any person shall take or cause to be taken all such measures (including the use of reasonable force and the seizure, removal or retention of any certificate of identity and any passport, exit permit or other travel document relating to that person) as may be necessary to give effect to it
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> (3) The Director General shall cause notice of the issue of a certificate under subsection (1) to be served personally or by registered post on the person to whom the certificate relates:
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> Provided that the non-receipt of the notice by that person shall not invalidate anything done under this section.
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> (4) Where a person in respect of whom a certificate has been issued under subsection (1):
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> (a) produces a written statement signed on or after the date of the certificate by the Director General or an authorized officer to the effect that all the tax, sums and debts specified in the certificate have been paid or that security has been furnished for the payment; or

(b) pays all the tax, sums and debts specified in the certificate to the officer in charge of a police station or to an immigration officer,

the statement or the payment, as the case may be, shall be sufficient authority for allowing that person to leave Malaysia.

(5) No legal proceedings shall be instituted or maintained against the Government, a State Government, a police officer or any other public officer in respect of anything lawfully done under this section or section 115(2).

(6) In this section:

"Commissioner of Police" includes a Chief Police Officer;

"Director of Immigration" means the Director of Immigration in Sabah, Sarawak or West Malaysia; "immigration officer" means a public officer having official duties in connection with the control of immigration into Malaysia or any part of Malaysia.

In my view s. 104(5) of the Income Tax Act clearly provides legal immunity to any public officer for any act lawfully done under that section. On the basis of the facts of this case the 1st defendant issued the certificate under s. 104(1) because at the relevant time there was outstanding income tax not paid by the plaintiff or SEAH to the 2nd defendant. Being a foreigner, the likelihood of the plaintiff leaving the country without paying the income tax, if his international passport is not seized is quite great. Under such circumstances there could be no doubts whatsoever that the 1st defendant was doing a lawful act in issuing the certificate against the plaintiff.

Similarly, the act of the 3rd defendant in seizing the plaintiff's international passport was based on the certificate lawfully issued by the 1st defendant. As such I was unable to see any valid reasons whatsoever to conclude that the act of the 3rd defendant was unlawful.

Having considered all the circumstances of this case I arrived at the conclusion that the 1st and 3rd defendants were immune from any action by the plaintiff by virtue of s. 104(5) of the Income Tax Act 1967. For the reasons as I have stated above the 1st and 3rd defendants' appeal is allowed with costs. I therefore struck out the plaintiff's writ of summons and statement of claims.